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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/610,488	06/30/2003	Georg Kormann	09160-US	5340
7590	08/25/2004		EXAMINER	
Jimmie R. Oaks Patent Department DEERE & COMPANY One John Deere Place Moline, IL 61265-8098			MAMMEN, NATHAN SCOTT	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 08/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/610,488	KORMANN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Nathan S Mammen	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 August 2004.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3,4 and 6-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,4 and 6-8 is/are rejected.

7) Claim(s) 3 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 6, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,006,367 to Thompson et al.

The Thompson '367 patent discloses an arrangement comprising a conveying channel (3), an opening in the conveying channel (defined by points 15 and 16) through which samples can be withdrawn. The opening is symmetrical about a central axis (the axis running through shaft 9). The arrangement further comprises a guide element (10) having a shape complementary to the opening and being mounted for pivotal movement about the axis between a sample withdrawal position and a closed position. See Fig. 1, solid and phantom lines of element (10). Although Thompson '367 patent does not disclose that the arrangement is used to withdraw samples from a flow of harvested crop, the Thompson structure is inherently capable of performing that function.

Regarding claim 4, 6, and 7: The central axis (passing through shaft 9) extends transverse to the direction of flow. The guide element (10) is inclined, when in the sample withdrawal position, relative to the angle of flow at an angle other than perpendicular. A drive (13) is coupled to the guide element for pivoting it about the central axis.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,119,531 to Wendte et al. in view of U.S. Patent No. 3,006,367 to Thompson et al.

The Wendte '531 patent discloses an arrangement for the withdrawal of samples. The Wendte '531 patent further states that the arrangement for withdrawal of samples encompasses applications on forage harvesters (col. 3, lines 47-49). As shown in the Strubbe '218 patent, forage harvesters typically and normally have a discharge spout (Fig. 9 – 112). What the Wendte '531 patent does not disclose is that the arrangement for withdrawal of samples comprises a pivoting guide element. The Thompson '367 patent discloses an arrangement for sampling the flow of material through a conveying channel having a pivoting guide element, as stated in paragraph 2 above. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Wendte '531 apparatus with the arrangement for withdrawal of samples as taught by the Thompson '367 patent, in order to provide an improved valve arrangement for collecting samples (see Thompson, col. 1, lines 9-38).

***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 4, 6-8 have been considered but are moot in view of the new ground(s) of rejection.

The Thompson '367 patent discloses the arrangement as claimed – specifically a guide element being pivotable about its center and the center of the opening. Although the Thompson '367 patent does not disclose that the arrangement is used for withdrawal of crop samples, it is inherently capable of performing that function. See In re Schreiber, 128 F.3d 1473 (Fed. Cir. 1997).

***Allowable Subject Matter***

6. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

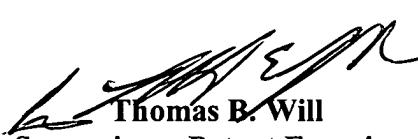
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959.

The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will  
Supervisory Patent Examiner  
Group 3600

NSM  
8/18/04

Nathan S. Mammen